

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 426 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MANU F VIHOL

Appearance:

1. Criminal Appeal No. 426 of 1988
MR SR DIVETIA, APP, for Petitioner
MRS DT SHAH for Respondent No. 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 06/04/98

ORAL JUDGEMENT

This appeal is filed by the State against the order of acquittal of the accused in Criminal Case No.571 of 1987 of Metropolitan Magistrate Court, Ahmedabad.

As per the brief facts of the case, the

complainant Takhuji Pahadji Chavda was residing in Dhanushdari Society, Saijpur, at Ahmedabad. He has one pan shop named as 'Darbar' Pan house near his residence. According to the prosecution case, original accused No.1 Manuji Fulaji Vihol is the real brother of wife of the complainant and accused No.2 Ashok Manuji Vihol is the son of accused No.1. The incident in question took place on 30th January 1987 in the evening at about 7.30 near Darbar Pan house of the complainant. The complainant was going to his house for supper from his Galla keeping the galla in charge of his son Pravin. At that time, when he proceeded towards his house and after some distance leaving the galla, accused No.1 Manuji met the complainant, uttered abuses, caught hold by his shirt and gave blows of fist. Accused No.2, son of accused No.1 was standing nearby with a stick and gave one stick blow on the head of the complainant. On getting stick blow, blood started oozing. When accused No.1 took out knife and was about to inflict blow, son of the complainant, Pravin, came rushing and he and one Ramuji, etc. caught hold of accused No.1 and prevented him from inflicting more blows. Thereafter, complainant went to Naroda Police Station and gave complaint before the Police Sub-Inspector at 8.00 p.m. The complainant, thereafter, was sent for medical treatment at Civil Hospital, Ahmedabad, where he was examined by Dr.Sulochana Munim, Medical Officer. She found one CLW on right side parietal region scalp 1 " x 1/4" x skin deep injury on the body of the complainant. Thereafter the matter was investigated by PSI, Vinodkumar Dasrathsinh Desai and chargesheet against both the accused under section 324, 323, 504, 114 of Indian Penal Code and section 135(1) of Bombay Police Act was filed before the Metropolitan Court No.3 at Ahmedabad. The charge was framed against both the accused. Accused pleaded not guilty and therefore both the accused were tried by the Metropolitan Court No.3. After recording evidence on behalf of the prosecution, statement of the accused under section 313 was recorded by the Metropolitan Court No.3 and after hearing both the sides, Metropolitan Magistrate Court No.3 vide its judgment and order dated 29th February, 1988 came to believe that the accused were not guilty and hence acquitted the accused under section 324, 323, 504, 114 of the Indian Penal Code and under section 135(1) of the Bombay Police Act. Hence this appeal by the State.

Appeal was originally filed against both the accused but was admitted against accused No.2 Ashok Manuji Vihol and was not admitted against accused No.1 Manuji Fulaji Vihol by the order of this Court (Coram: B.S.Kapadia, J.) dated 22.7.88, which reads as under:

"Leave granted qua the respondent No.2 Ashok Manuji Vihol who has given a stick blow. Appeal admitted qua respondent No.2. Leave refused qua the respondent no.1, Manuji Fulaji Vihol."

Learned APP, Mr Divetia, on behalf of the State has contended that the learned trial Magistrate has erred in acquitting the accused. Mr Divetia contended that there is evidence of complainant who is an injured witness and is supported by medical evidence. There is no reason to discard the evidence of the complainant as corroborated by medical evidence. Mr Divetia also contended that the prosecution has examined other two eye witnesses also, namely, PW 3, Pravinsinh, son of the complainant and PW 4, Ex.10, Ganpatsinh Nathusinh Rathod. There is no reason at all to discard the evidence of both these eye witnesses nor any cogent reasons have been assigned by the learned trial Magistrate to disbelieve the evidence of these two eye witnesses and hence it is contended that the acquittal of accused No.2 is required to be set aside and accused No.2 is required to be convicted under section 324, 323, 504 of the Indian Penal Code.

Learned Advocate Mrs.D.T.Shah on behalf of the respondent No.2 has contended that the evidence of the complainant is not trustworthy and hence could not be believed. Mrs.Shah has further contended that there are major discrepancies in the evidence of eye witness PW 3 Ex.9, Pravinsinh and in the evidence of complainant PW 1. Hence it is contended that the learned trial Magistrate has rightly discarded the evidence of eye witnesses and has not believed the version of the complainant and has rightly acquitted both the accused for the offences for which they are charged.

The learned trial Magistrate in his judgment dated 29th February, 1988 has stated that the evidence of complainant is not trustworthy because the complainant named one Rajuji as eye witness and Rajuji has not corroborated the evidence of the complainant and there is discrepancy between the evidence of the complainant and his son Pravinsinh and other panch witnesses have turned hostile and have not supported the prosecution version. Hence the learned Magistrate acquitted the accused.

Having considered the rival contentions of both the sides and appreciating the evidence on record afresh, it appears that the complaint by the complainant has been immediately given before the Naroda Police Station at

8.00 pm. This complaint is proved and exhibited as Ex.6 in the evidence of the complainant and further corroborated by the evidence of Investigating Officer, Vinodkumar Rathod, PW 7, Ex.14. The version of the prosecution in the complaint is that while the complainant was proceeding towards his house, accused No.1 Manuji Vihol met him and started giving abuse to the complainant, was caught hold by his shirt and started to give blow of fist. At that time, son of accused No.1 was standing nearby with stick and he gave a stick blow to the complainant. Blood started oozing and the accused No.1 took out knife and was about to inflict blows. At that time, son of the complainant came running from his Galla and he with one Ramuji, etc. caught hold of accused No.1 and prevented him from inflicting more blows.

The prosecution has examined 3 witnesses to prove the incident. Complainant PW 1 at Ex.5, Pravinsinh Takhuji, son of the complainant, PW 3 at Ex.9 and Ganpatsinh Rathod, PW 4 at Ex.10. Appreciating the evidence of other two eye witnesses except complainant, it appears that PW 3, Ex.9, Pravinsinh Takhuji has not seen the incident. According to the complaint, he came running from the Galla after a stick blow had already been inflicted on the head of the complainant. In the cross examination, this witness also admitted that a stick blow had already been inflicted by Ashok i.e. accused No.2 on the head of his father before he reached on the spot of the incident and his father had sit down. It is not the prosecution case anywhere that the incident upto inflicting of stick blow was seen by this witness sitting at his galla. A vague mention is made in the chief examination that scene of offence is visible from the Galla, the distance as stated by the witness is of 30 ft. Assuming that this witness has seen the incident from his Galla, then also, it is doubtful how he might have witnessed the incident sitting on the Galla at a distance of 30 ft. Moreover, this witness is the son of the complainant and hence highly an interested witness.

So far as other eye witness Ganpatsinh Rathod is concerned, he deposed that the incident had occurred and he had separated both the parties. According to the complainant, this witness, Ganpatsinh accompanied him till the Police Station suggesting that this witness and the complainant know each other well. Even then this witness has not been mentioned as eye witness in the FIR more particularly when the complainant says that this witness was present in the Police Station when the complaint was recorded. Therefore, it clearly appears

that this witness came afterwards in the prosecution story as an eye witness after the recording of the complaint. Had he seen the incident then there was no reason for the complainant not to mention his name to be the person who separated the accused and complainant in the quarrel. It has been contended by Mr Divetia that in the complaint he has mentioned that his son and Rajuji, etc. had separated the complainant from the accused in the quarrel and Ganpatsinh is included in etc. This contention cannot be accepted for the simple reason that when the complainant knows this witness very well, he accompanies the complainant to the Police Station and was present outside the Police Station when the complaint was recorded, then in those circumstances, there was no reason for the complainant not to mention Ganpatsinh as an eye witness in the complaint and therefore no reliance can be placed on the evidence of this eye witness to prove the prosecution story.

It was further contended by Mr Divetia that the complainant is supported by the medical evidence and there is no reason to disbelieve him even though other eye witnesses may not corroborate the complainant. True that a single eye witness is sufficient to prove the guilt of the accused and when the witness is injured and reliance can be placed upon him he needs no corroboration. But in those circumstances, it must clearly be a case of the prosecution that the witness is extremely truthful and nothing could be found out from his evidence to disbelieve him. Therefore, the evidence of the complainant is required to be appreciated with foregoing observations. Though the complainant is supported by the medical evidence, but that would not alone suffice to place reliance on the evidence of the complainant. It is pertinent to note herein at this juncture that PW 3, Pravinsinh, son of the complainant has married to one Jyotsnaben i.e. niece of accused No.1. Accused No.1, according to the evidence, had played a major part in arranging this marriage between Pravinsinh and Jyotsnaben. It appears that there was some dispute between the husband and wife in their married life and Jyotsnaben was staying apart from her husband Pravinbhai. Admittedly there are some litigations pending in the Metropolitan Court between the parties under section 125 of the Criminal Procedure Code and for bigamy. That suggests that there was enmity between the complainant and the accused. Now, considering the evidence of the complainant, it clearly appears that the complainant has improved his case. In the complaint Ex.6, the complainant has mentioned that one Ramuji was the eye witness of the incident. This

Ramuji has been examined by the prosecution as PW 2, Ex.7, as a panch of Panchnama of scene of offence and that clearly suggests that it is the prosecution case that Ramuji is not an eye witness of the incident and this is a major discrepancy in the case of the prosecution which would cast a shadow of doubt in the case of the prosecution and will shaken the reliability of the evidence of complainant even though he is supported by the medical certificate. The complainant names one person as an eye witness in the complaint and according to the prosecution itself, it turns out that the said person is not an eye witness. In deposition of PW 1, complainant, he names of some other person i.e. Ganpatsinh PW 4, Ex.10, as eye witness in improvement of his story narrated in the complaint, and hence no reliance can be placed on such witness and this set of circumstances taints the evidence of the complainant to be accepted to base conviction of the accused.

In this view of the matter, the learned Metropolitan Magistrate, Court No.3, has rightly acquitted the accused though it is pertinent to observe here that the judgment of the trial Court is too short to be a judgment inasmuch as it does not disclose clear reasoning for the conclusion arrived at. However, appreciating the evidence afresh as aforesaid, the incident as narrated by the prosecution is not proved beyond doubt and hence the appeal against the acquittal is required to be dismissed. Hence the appeal is dismissed accordingly.

.....

(vjn)